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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Biennial Review – Amendment of</b>	)	
<b>Parts 0, 1, 13, 22, 24, 26, 27, 80,</b>	)	
<b>87, 90, 95, 97 and 101 of the Commission’s Rules</b>	)	<b>WT Docket No. 98-20</b>
<b>To Facilitate the Development and Use of the</b>	)	
<b>Universal Licensing System in the Wireless</b>	)	
<b>Telecommunications Services</b>	)	
	)	
<b>Forbearance from Applying Provisions of the</b>	)	
<b>Communications Act to Wireless</b>	)	<b>WT Docket No. 98-100</b>
<b>Telecommunications Carriers</b>	)	

**COMMENTS OF UTC**

Pursuant to Public Notice, DA 98-1687, released August 21, 1998, UTC, The Telecommunications Association, hereby respectfully submits the following comments on the July 31, 1998 Letter from the Personal Communications Association Proposing Streamlining of Wireless Regulations (PCIA Letter). UTC supports the Commission’s efforts in the above-captioned dockets to streamline its rules to remove unnecessary regulations, and supports the proposals in the PCIA Letter aimed at providing greater flexibility for fixed microwave licensees. UTC also urges the FCC to eliminate the unnecessary restriction on the operation of private operational fixed microwave systems in Section 101.603(b)(1) of the Commission’s Rules.<sup>1</sup>

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<sup>1</sup> 47 C.F.R § 101.603(b)(1).

## **I. Introduction**

UTC is the representative on telecommunications matters for the nation's electric, gas and water utilities, and natural gas pipelines. Over 1,000 such entities are members of UTC, ranging in size from large combination electric and gas utilities serving several million customers to small rural electric cooperatives and water districts. Serving on UTC's Board of Directors are representatives from the following utility and pipeline associations:

- American Gas Association
- American Public Power Association
- American Water Works Association
- Association of Edison Illuminating Companies
- Edison Electric Institute
- Interstate Natural Gas Association of America
- National Rural Electric Cooperative Association

All utilities and pipelines rely on communications systems and most operate private communications systems, including private point-to-point microwave networks, in satisfying their public service obligations. UTC's members therefore have an interest in efforts to streamline the Commission's microwave rules.

UTC has also been an active participant in the Commission's universal licensing service and regulatory forbearance proceedings. In both these proceedings, UTC has urged the Commission to provide greater flexibility to private licensees. UTC is gratified the PCIA has joined with UTC to promote this flexibility.

## **I. UTC Supports the Provision of Additional Flexibility in the Fixed Microwave Rules**

In its letter, PCIA recommends that the Commission eliminate numerous unnecessary regulations relating to application procedures and technical standards for the fixed microwave

service. These include:

- The requirement to disclose the real party in interest to applications in Section 101.19;
- Ownership change procedures in Section 101.41;
- The requirements concerning the maintenance of station records in Section 101.217;
- Discontinuance of service restrictions in Section 101.305;
- Tariff and reporting requirements in Section 101.307;
- Limitations on the use of transmitters in Section 101.133; and
- Restrictions on the shared use of microwave stations in Section 101.135.<sup>2</sup>

UTC supports the elimination of these regulations to promote greater flexibility in the use of microwave systems by both common carrier and private licensees. These restrictions are not necessary to promote efficient use of spectrum, protect against interference or advance any other important public interest goal. As explained more fully below, UTC is particularly supportive of the recommendations in the PCIA Letter regarding the elimination of restrictions on the use of microwave facilities. These recommendations are in accordance with UTC's recommendations in its comments in the regulatory forbearance docket, WT Docket 98-100, that the Commission eliminate the anachronistic restriction that prohibits private microwave systems from carrying common carrier traffic.<sup>3</sup>

While UTC supports many of the recommendations in the PCIA Letter, UTC is concerned about statements made by PCIA regarding the future licensing mechanism that must be used by the Commission for microwave systems. PCIA states that the use of competitive bidding is mandated for the microwave bands.<sup>4</sup> This statement is inaccurate for two (2) reasons.

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<sup>2</sup> 47 CFR §§101.19, 101.21, 101.41, 101.217, 101.305, 101.307, 101.133, 101.135.

<sup>3</sup> UTC's Comment in WT Docket No. 98-100, filed August 3, 1998.

<sup>4</sup> PCIA Letter at p. C-4.

First, the licensing of microwave systems does not involve the acceptance of mutually exclusive applications. The Commission's authority to use competitive bidding in licensing is limited under Section 309(j) of the Communications Act to situations in which mutually exclusive applications are accepted for any initial license or construction permit. However, under Section 101.103, applications for microwave licenses are coordinated, on a case-by-case basis, based on the proposed frequency and operating characteristics (such as location, power, height, etc.). Therefore, applications for microwave licenses generally are not mutually exclusive, and the Commission's competitive bidding authority does not apply to these applications.

Second, even if mutually exclusive applications were to be submitted, the Commission's spectrum auctioning authority contains an important exception for "public safety radio services" that would prevent the Commission from imposing auctions for particular applicants.<sup>5</sup> The term "public safety radio services" is defined to include "private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that – (1) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public."<sup>6</sup> Congress further clarified this definition in the report that accompanied the legislation that added this "public safety exemption."

*[T]he exemption from competitive bidding authority for "public safety radio services" includes "private internal radio services" used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments. Though private in nature, the services offered by these entities protect the safety of life, health, or*

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<sup>5</sup> Section 309(j)(2) of the Communications Act of 1934 (as amended).

<sup>6</sup> *Id.*

*property and are not made commercially available to the public.*<sup>7</sup>

It is clear, therefore, that competitive bidding is not “mandated” for the microwave bands and, in fact, is not permitted for the licensing of police, fire, utility, pipeline and other “public safety radio services.”

## **II. UTC Strongly Supports the Elimination of Restrictions on the Use of Microwave Facilities**

UTC supports PCIA’s recommendations that the Commission eliminate the limitations on the use of transmitters (Section 101.133) and on the shared use of radio stations (Section 101.135) and also urges the Commission to modify Section 101.603(b)(1) of its rules to eliminate the prohibition on private microwave systems carrying common carrier traffic. UTC believes that the elimination of this prohibition is consistent with the Commission’s authority pursuant to Sections 10 and 11 of the Telecommunications Act of 1996,<sup>8</sup> which requires the Commission to identify additional areas of wireless regulation where it should exercise its forbearance and to review all regulations applicable to providers of telecommunications services and determine whether any rule is no longer in the public interest as the result of meaningful economic competition between providers of telecommunications service.<sup>9</sup> Such an amendment would also further the goals of the Telecommunications Act by fostering facilities-based competition, and eliminating unnecessary or obsolete regulations, with absolutely no countervailing negative impact

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<sup>7</sup> H. Rpt. 105-49, *Congressional Record*, p. H6173 (June 29, 1997) (emphasis added). This report accompanied the Balanced Budget Act of 1997, P.L. 105-33 (1997).

<sup>8</sup> P.L. 104-104 (1996),

<sup>9</sup> While the Commission’s forbearance authority under Section 10 is generally limited to regulations governing telecommunications carriers UTC has urged the Commission not be to be constrained by such an overly narrow interpretation of its authority with regard to UTC’s request because the rule modification it seeks would directly benefit telecommunications carriers.

on consumers.

As UTC noted in its comments in WT Docket No. 98-100, many of UTC's member companies with private microwave systems have been approached by personal communications service (PCS) licensees, cellular carriers, specialized mobile radio (SMR) licensees, rural telephone companies, and others about the possibility of leasing reserve capacity on the licensees' private microwave systems. In many cases, the microwave licensees are leasing antenna tower space to these carriers or commercial mobile radio service (CMRS) providers, and would be willing to provide microwave capacity, on a private carrier basis, to these carriers for their cellsite interconnect. Under the current rules, however, a private microwave licensee can enter such an arrangement with a carrier only if it is willing to relicense its microwave system as "common carrier," thereby becoming subject to common carrier responsibilities. Faced with the choice of relicensing their systems and exposing themselves to common carrier regulations or foregoing the opportunity to provide capacity to carriers, many private microwave licensees choose not to provide capacity. Thus, the continued application of the prohibition on private microwave licensees acting as private carrier's carriers is at best an unnecessary regulatory burden or at worst an impediment to competition.

Recognizing that the Commission may be reluctant to completely eliminate the permissible use restrictions between private and common carrier microwave systems, or to adopt a "predominant use" test for determining whether a given system should be licensed as private or common carrier, UTC has recommended a limited amendment to Section 101.135. The amendment below would allow pro-competitive sharing while retaining the traditional distinctions

between private and common carrier microwave systems (new language is underlined; deleted language is ~~interlined~~):

**§101.135. Shared use of radio stations and the offering of private carrier services.**

Licensees of Private Operational Fixed Point-to-Point Microwave radio stations may share the use of their facilities on a non-profit basis or may offer service on a for-profit private carrier basis, subject to the following conditions and limitations:

(a) Persons or governmental entities licensed to operate radio systems on any of the private radio frequencies set out in §101.101 may share such systems with, or provide private carrier service to, any person eligible for licensing under this part, regardless of individual eligibility restrictions, provided that the communications being carried are permissible under ~~§101.603~~ §§101.603(a) and 101.603(b)(2) - (3). . . .

This amendment would parallel the change effected through Section 101.133 which permits transmitters licensed for common carrier services to be concurrently used for non-common carrier communications purposes. This amendment also would conform the use of private microwave systems to the current regulatory scheme for non-microwave communications technologies. For example, an entity owning private fiber optic communications facilities or satellite transponder capacity may share or lease that capacity, on a private carrier basis, to any entity, including common carriers, without becoming a communications common carrier.

UTC's recommendation to eliminate the anachronistic prohibition on the intermingling of common carrier and private microwave traffic on the same microwave facilities was also included in UTC's *Petition for Reconsideration*, which was filed on June 27, 1996, in WT Docket No. 94-



148.<sup>10</sup> This petition has been pending with the Commission for over two (2) years. While UTC remains hopeful that the Commission will act on the pending petition, it nevertheless believes that it is appropriate to consider this issue in light of the Commission's initiation of its *Notice of Proposed Rulemaking* in WT Docket No. 98-20 and its request for comment on the PCIA Letter.

### **III. UTC Supports Conditional Licensing in the 900 MHz Band**

UTC is pleased that PCIA supports UTC's proposal to expand the permissible use of conditional authorizations under Section 101.31(b) to include services such as 900 MHz point-to-point systems.<sup>11</sup> Under Section 101.31(b), licenses for microwave systems in specific bands may begin operations prior to FCC authorization if certain conditions are met. However, this rule does not currently apply to 900 MHz point-to-point systems.

In its comments in the universal licensing service proceeding, WT Docket No.98-20, UTC urged the Commission to expand conditional licensing to include both multiple address systems (MAS) and 900 MHz point-to-point systems. As UTC noted in its comments, the extension of this conditional licensing authority is consistent with the Commission's proposals to reduce the administrative burdens on applicants and poses no threats to the operations of incumbent licensees or the processing of other applicants in these bands. In fact, under ULS, electronic access to the Commission's database will be available, which will provide applicants with better information on which to make frequency selection decisions and incumbent licensees with information regarding actual or potential sources of interference. In addition, the electronic filing of applications will

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<sup>10</sup> UTC *Petition for Reconsideration of Commission Report and Order* in WT Docket No. 94-148, 11 FCC Rcd 13449 (1996). Public Notice of the UTC petition was published in the Federal Register on July 24, 1996, 61 Fed Reg. 38448.

mean that the FCC's database will be up-to-date on all filed applications, further reducing any possibility of problems associated with the conditional licensing of MAS or 900 MHz point-to-point systems.

### **Conclusion**

UTC supports the recommendations in the PCIA Letter to eliminate and streamline regulations pertaining to the Commission's fixed microwave rules. In particular, UTC supports the elimination of restrictions on the use of microwave systems and urges the Commission to permit private microwave systems to carry common carrier traffic. UTC also supports the extension of conditional licensing authority to MAS and 900 MHz point-to-point systems.

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<sup>11</sup> 47 CFR § 101.31(b)

**WHEREFORE, THE PREMISES CONSIDERED,** UTC urges the Commission to take action on this matter in accordance with the views expressed in these comments.

Respectfully submitted,

**UTC**

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